

Remarks

In the Action dated December 14, 2001, the U.S. Patent and Trademark Office required restriction under 35 U.S.C. §121 from among the following groups:

- I. Claims 1-16, 25-35, 38-39 and 49, drawn to a nucleic acid, cells and plants transformed with that nucleic acid and a method of generating a transgenic plant, classified in class 800, subclass 278, for example.
- II. Claims 17-24 and 50, drawn to a protein, classified in class 530, subclass 350, for example.
- III. Claims 36-37, drawn to computer readable medium, classified in class 360, subclass 131, for example.
- IV. Claim 40, drawn to a method for identifying a gene for an insect inhibitory protein, classified in class 435, subclass 91.1, for example.
- V. Claims 41-48, drawn to a method for identifying plasmid DNA of a *Bacillus* species, classified in class 435, subclass 6, for example.

The Applicants replied January 14, 2002 and elected Group III consisting of Claims 36-37 without traverse and respectfully requested that the application be examined on the merits. Those claims are directed to a computer readable medium having recorded thereon one or more nucleotide sequences selected from the group consisting of SEQ ID NO:1 through SEQ ID NO:8283 and complements thereof. Further, Applicants reserved the right to file divisional applications to further prosecute non-elected groups.

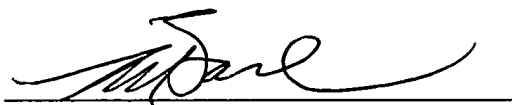
This paper, however, is responsive to a supplementary Restriction requirement imposed upon the Applicants by the US PTO because the Examiner asserts that the elected Group II claims 36-37 encompass nucleotide sequences encoding different proteins that are structurally distinct chemical compounds and are unrelated to one another. The Examiner further asserts that these sequences are thus deemed to **normally** constitute independent and distinct inventions within the meaning of 35 USC §121 and 37 CFR §1.141. Normally, and particularly more recently, the PTO has required that Applicants that submit claims which **claim** more than one nucleotide or amino acid sequence are required to elect a single species and further in prosecution are required to limit the scope of the claims to a single nucleotide sequence or amino acid sequence (1)

because it would be unduly burdensome on the PTO to perform a search on more than a single sequence, and (2) there is some assertion by the PTO that the sequences are either unrelated or incapable of use together. In this case, the Applicants assert however that the scope of the claims is not and should not be directed to any specific sequence. **The claims are directed to a computer readable medium** that contains the sequences as set forth in the sequence listing. It is therefore irrelevant that the sequences are structurally distinct chemical compounds. However, it is relevant that the sequences are related to one another in that the sequences are all from the genome of *Bacillus thuringiensis*. The sequences are capable of use together in a computer readable medium at least as a database of information that, because it is in electronic format, is capable of being parsed, analyzed, and characterized by a computer using any number of algorithms, etc. as set forth in the specification as filed from about page 51 line 26 through about page 54 line 16. Therefore, it should not be necessary to limit the claims to a single nucleotide or amino acid sequence, and the Applicants should not be required to elect a single sequence.

Therefore, to the extent that the Examiner is requiring the Applicant to elect a single species for further examination, the Applicants herewith elect SEQ ID NO:1, but it is not the intention of the Applicant's to narrow the scope of the claims to only the elected sequence.

Should any questions arise or if Applicants or Applicants' attorney can facilitate the examination of this application, it is respectfully requested that the PTO contact the undersigned attorney.

Respectfully submitted,



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